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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/814,953

03/31/2004

Terry Dietz

1671-0293

8391

7590 07/26/2007  
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EXAMINER

PHILOGENE, PEDRO

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

07/26/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/814,953

**Applicant(s)**

DIETZ ET AL.

**Examiner**

Pedro Philogene

**Art Unit**

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 8-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 3/9/07.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 8-18 rejected under 35 U.S.C. 102(e) as being anticipated by Kovacevic (7,179,295).

With respect to the claims, Kavocovic et al disclose in a telemetric knee prosthesis adapted to measure forces transmitted across the knee joint, the knee prosthesis having a femoral component, a tibial bearing member in articulating contact with the femoral component, a tibia engaging member and a tibial tray engaged to the tibial bearing member and the tibia engaging member, as best seen in FIG.1, the tibial tray comprising an upper plate having a portion configured for engaging the tibial bearing member; a lower plate having a portion configured for engaging the tibia engaging member; as best seen in FIGS.27-33, the lower plate spaced apart from the upper plate and defining a plurality of cavities opening (430, 432, 433, 434, 436, 438) away from the upper plate, each of the cavities including a diaphragm (440, 442, 443, 434, 436, 438) adapted to flex when subjected to a load normal to the diaphragm, as best seen in the FIGS; a plurality of support post (450) each connected between the upper plate and the diaphragm of a corresponding one of the plurality of cavities,

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wherein the support posts are circular in cross-section; as set forth in column 2, lines 14-15; and a force sensing element (460) disposed within each of the plurality of cavities and operable to produce an output signal in response to flexing of the diaphragm, a circuit element (490), as best seen in FIGS, disposed in the central cavity for processing the output signal from the force sensing element in each of the plurality of cavities; wherein each of the plurality of wiring channels is aligned at about 45 degrees relative to a parallel plane; as set forth in column 9, lines 1-21. The force sensing element including four pairs of radially aligned strain gages, the strain gages of each pair arranged to measure differential strain in a radial direction and includes an inner gage mounted on the diaphragm adjacent the center of the circular diaphragm and an outer gage mounted on the diaphragm immediately adjacent the outer wall of the cylindrical cavity; as set forth in column 8, lines 57-67; wherein the circular diaphragm exhibits a micro-strain behavior under load that produces a maximum magnitude at a radial location from the center of the circular diaphragm, and further wherein the inner gage is positioned to span the maximum magnitude radial location; as set forth in column 9, lines 1-21; wherein the circular diaphragm exhibits a micro-strain behavior under load that produces a zero-crossing point between the center of the circular diaphragm and the outer wall of the cylindrical cavity, and further wherein the outer gage is positioned between the zero-crossing point and the outer wall; as set forth in column 8, lines 57-67, column 9, lines 1-21; a circuit element disposed in the central cavity for processing the output signal from the force sensing element in each of the plurality of cavities; as best seen in FIG.32; wherein none of the four pairs of radially aligned strain gages is aligned

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with the wiring channel communicating with the corresponding one of the plurality of cavities; as best seen in FIGS.29-33; an inner gage positioned such that the at least a portion of the inner gauge is mounted on one side of the diaphragm directly opposite to where a portion of the corresponding one of the plurality of support posts contacts the other side of the diaphragm; as set forth in column 9, lines 1-21.

***Response to Amendment***

Applicant's arguments, see Remarks, filed 5/7/07, with respect to the rejection(s) of claim(s) 1-13 under 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Kovacevic.

***Conclusion***

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene  
July 17, 2007

  
PEDRO PHILOGENE  
PRIMARY EXAMINER